HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting.)

(Chapter VIII Rule 32 (2) (b)

Description of the Case.

Criminal Appeal No. 82 of 2004

Prashant Garg … Appellants

Versus

State … Respondent.

Approved for reporting.

_____

~~Not approved for reporting~~

Date of decision: 23rd March,2005.

Initial of Judge.

_____

HIGH COURT OF UTTARANCHAL
AT NAINITAL
Criminal Appeal No. 82 of 2004

Prashant Garg
S/o Sri Subhash Chandra Garg
R/o Near Barsati Nahar
Molla Gorakhpur
P.S. Haldwani
District Nainital …….Appellant

Versus

State …..Respondent.

Sri J.S.Virk, learned counsel for the appellant,
Sri A. Rab, learned Addl. Government Advocate for the State

Hon'ble B.C. Kandpal, J

1. This criminal appeal arises out against the judgment and order dated 16.06.2004 passed by Sessions Judge, Nainital in Sessions Trial No. 73 of 2003 State Vs. Prashant Garg arising out of case crime No. 258 of 2003 P.S. Haldwani, District Nainital convicting and sentencing the accused/appellant under Section 498-A I.P.C. for one year rigorous imprisonment and fine of Rs. 5,000/- and in default of payment of fine further three months rigorous imprisonment and for the offence under Section 306 of I.P.C. three years imprisonment and fine of Rs. 10,000/- and in default of payment of fine, further six months rigorous imprisonment.

2. Brief facts of the prosecution case are that Chandan Singh is the uncle of the deceased – Saroj who lodged the report at Police Station Kotwali Haldwani stating therein that Saroj was married with Prashant Garg five years ago at Haldwani. They have one daughter of eight months. In spite of giving lots of valuable articles beyond their status by the parents of the deceased – Saroj at the time of marriage, her husband - Prashant Garg and mother-in-law Sudha Garg done cruelty upon Saroj - deceased for demanding more money after the marriage on account of demand of dowry. After the marriage, Smt. Saroj – deceased come to know that her husband is habitual of drugs and wine. In this connection,

he was earlier admitted at Nirwan Hospital, Hiranagar, Haldwani for medical treatment. Saroj – deceased was physically tortured by her husband – Prashant Garg and mother-in-law Sudha. On 16.02.2003, brother-in-law of the applicant who lives along with his sister informed to the applicant that Saroj – deceased is in a very serious condition and when the applicant along with his brother Dikar Singh and other villagers reached at the hospital, they were informed that Saroj has died.

3. A case was registered against the accused Prashant Garg and her mother Smt. Sudha under Sections 498-A, 304-B, 504 I.P.C. and 3/4 of Dowry Prohibition Act at Police Station, Haldwani. Thereafter, the dead body of the deceased was sent for post mortem.

4. The Investigating Officer submitted the chargesheet against the accused. After submission of chargesheet the accused Prashant Garg was committed to the Court of Sessions for trial and the trial court on 06.06.2003 framed charge under Section 498-A, 304-B I.P.C. and 3/4 Dowry Prohibition Act against the accused – Prashant Garg.

5. The prosecution in order to support its case produced Chandan Singh (P.W.1) – complainant, Dikar Singh (P.W.2), Vimal (P.W.3), Smt. Khasti Devi (P.W.4) and Sri C.D. Pant (P.W.5).

6. After the evidence of the prosecution was over, the statement of the accused/appellant was recorded under Section 313 of the Criminal Procedure Code. The accused person did not adduce any evidence in his defence.

7. The learned trial court, after hearing learned counsel for the parties and having perused the entire evidence on record was pleaded to convict the accused – Prashant Garg under Section 498-A I.P.C. for one year rigorous imprisonment and fine of Rs. 5,000/- and in default of payment of fine further three months rigorous imprisonment and for the offence under Section 306 of I.P.C. three years imprisonment and fine of

Rs. 10,000/- and in default of payment of fine, further six months rigorous imprisonment.

8. Feeling aggrieved by the impugned judgment and order, the accused preferred the appeal, which has been placed before this Court for final disposal.

9. Heard the learned counsel for the parties and perused the record.

10. It is important to mention here that the prosecution has produced five witnesses, out of which Chandan Singh (P.W.1), Dikar Singh (P.W.2), Sri Vimal (P.W.3) and Smt. Khasti Devi (P.W.4) are the witnesses related to the prosecution case. Sri C.D. Pant (P.W.5) is the Investigating Officer; hence, he is a formal witness.

11. Perusal of the statement of Chandan Singh (P.W.1) shows that he is the uncle of the deceased Saroj. He is the informant of the case and he lodged the First Information Report at the police station concerned but this witness has not supported the prosecution case in his examination before the court. He has stated that in his presence, there was no talk relating to the demand of dowry. He has also stated that the deceased Saroj had also never disclosed before him as to her husband Prashant Garg (accused) had been demanding any dowry. He has also stated that after the marriage deceased never complaint about the fact that her husband Prashant Garg and other in-laws have been demanding dowry. It has rather come in the evidence of this witness that the deceased Saroj was working as Vice-Principal in the school which was being run by her in-laws.

12. Likewise Dikar Singh (P.W.2) – father of the deceased - Saroj has also deposed that Prashant Garg (accused) had never made any demand of dowry. He has also stated that his daughter had never complained about the fact that her husband had been demanding dowry.

13. Vimal (P.W.3) brother of the deceased – Saroj has also deposed the same thing in his evidence before the Court.

14. Smt. Khasti Dei (P.W.4) is the mother of the deceased - Saroj. She has also stated that her son-in-law Prashant Garg (accused) neither demanded dowry nor the deceased Saroj told her as to whether her husband had been demanding any dowry.

15. The crux of the case are that the accused – Prashhant Garg was an edict of drugs and liquor and the deceased used to remain under stress and mental agony on account of the habit of her husband and the same resulted her death by committing suicide. There is no iota of evidence available on record which may suggest that the accused had ever abated his wife to commit suicide.

16. Perusal of the judgment passed by the trial court reveals that the conviction has been recorded by the trial court on the basis of conjecture and surmises. I do not find myself in agreement with the reasoning of the trial court on the basis of which the conviction has been recorded. The conviction of any person cannot be recorded on the basis of conjecture and surmises unless the cogent and reliable evidence is available on the record.

17. As far as the offence under Section 498-A is concerned, no witness produced by the prosecution has deposed in the evidence that the accused – Prashant Garg had ever demanded any dowry or had subjected the deceased – Saroj to cruelty on account of demand of dowry. It has again nowhere come in the evidence that the accused/appellant had abated the deceased to commit suicide which is an essential ingredients for warranting the conviction under Section 306 I.P.C.

18. For the reason stated above, I am of the view that the conviction and the sentence awarded by the trial court vide order dated

16.06.2004 is liable to be set aside. The prosecution has utterly failed in establishing the guilt of the accused/appellant.

19. I am of he view that the accused/appellant is liable to be acquitted of all the charges leveled against him.

20. Accordingly, the appeal is allowed. The conviction and sentence passed by the court below by way of impugned judgment and order is hereby set aside.

21. The appellant shall be released forthwith unless wanted in any other case.

(B.C. Kandpal, J.)

23.03.2005
ASWAL